APPENDIX A

(CONSTITUTIONAL AND STATUTORY PROVISIONS CITED AND QUOTED)

United States Constitution, 14th Amendment, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article 5, Section 1, Annotated Code of Maryland (1957 ed. 1968 Replacement Vol.)

Any party may appeal to the Court of Appeals from any final judgment or determination of a court of law in any civil suit or action, including a mandamus action, or in any prosecution for the recovery of any penalty or fine or damages; provided, however, that this section shall not be construed to permit an appeal to the Court of Appeals from any judgment or determination entered by a court of law in the proper exercise of its jurisdiction on appeal from a justice of the peace, people's court or trial magistrate.

Maryland Rules of Procedure, Rule 825

Rule 825. Record — Time for Transmitting.

a. *Within Thirty Days.*

Within thirty days after the first order for appeal is filed or a writ of certiorari is granted unless a different

time shall be fixed by order entered pursuant to sections b and c of this Rule, the clerk of the court having possession of the record shall transmit it to this Court.

b. *Lower Court May Shorten or Extend Time.*

Upon application of any party and for sufficient cause shown, or upon its own motion, the lower court may, by order, shorten or extend the time for transmitting the record, if its order is made before the expiration of the period for transmitting the record as originally prescribed or as extended by a previous order; but the lower court shall not extend the time to a day more than ninety days from the date after the first order for appeal is filed or a writ of certiorari is granted.

c. *Court of Appeals May Shorten or Extend Time.*

Upon application of any party and for sufficient cause shown, or upon its own motion, this Court may direct that the record be transmitted within such shorter or longer period of time as may be ordered. Such an order will not be entered after the time for transmitting the record has expired unless it be shown that the failure to transmit the record was occasioned by the neglect, omission or inability of the clerk of the lower court, the court stenographer or appellee. An order of this Court entered pursuant to this section shall supersede and take precedence over any order of the lower court entered pursuant to section b of this Rule.

d. *Delay in Transmitting Due to Mistake.*

An appeal shall not be dismissed because the record has not been transmitted within the time prescribed, if it appears to this Court that such delay was occasioned by the neglect, omission or inability of the clerk of the lower court, the court stenographer or appellee; provided, however, that such neglect, omission or inability shall not be presumed but must be shown by the appellant.

e. *When Deemed Transmitted in Proper Time.*

The record shall be deemed to have been transmitted within the time permitted under section a or under an order entered pursuant to section b or c of this Rule if, before the expiration of the time limited for its transmission, (i) it shall have been delivered to the Clerk of this Court, or (ii) it shall have been deposited by the clerk of the lower court in the United States mail, as registered or certified mail, postage prepaid, return receipt requested, directed to the Clerk of this Court.

Maryland Rules of Procedure, Rule 835

Rule 835. Dismissal of Appeal.

a *By the Court.*

1. From *Pro Forma* Orders.

This Court will not entertain or consider an appeal taken from a *pro forma* order, judgment or decree, but will treat every such appeal as prematurely taken and will dismiss the same whenever it appears on the face of the record, or otherwise, that the appeal is from such *pro forma* order, judgment or decree.

2. Any Other Cause.

This Court may, on its own motion, dismiss an appeal for any cause set forth in section b of this Rule.

b. *On Motion.*

On motion filed by any party, an appeal may be dismissed for any one of the following reasons:

(1) The appeal is not allowed by law or by Rule 809 (Order Overruling Demurrer Not Appealable).

(2) The appeal has not been properly taken pursuant to Rule 811 (How Appeal to Be Taken).

(3) The order for appeal has not been filed with the lower court within the time prescribed by Rule 812 (Appeal — Time for Filing).

(4) The record has not been transmitted within the time prescribed by Rule 825 (Record — Time for Transmitting).

(5) The contents of the printed record extract do not comply with section b of Rule 828 (Part of Record to Be Printed — Printed Record Extract).

(6) A brief has not been filed by the appellant within the time prescribed by Rule 830 (Filing of Briefs).

(7) The size, style, format, readability or method of reproduction of a brief, appendix, or printed extract does not comply with section a of Rule 831 (Style and Contents of Brief).

(8) The case has become moot.

c. *Striking Out Order.*

If an appeal has been dismissed pursuant to subsection (4) or subsection (6) of section b of this Rule, the order dismissing the appeal may, upon motion filed within twenty days thereafter be rescinded if this Court be satisfied that the failure to transmit the record or to file a brief within the time prescribed by these Rules was unavoidable by reason of sickness or other sufficient cause. If an appeal has been dismissed pursuant to paragraph (7), the order dismissing the appeal may, upon motion filed within twenty (20) days thereafter, be rescinded if this Court be satisfied that a properly printed brief, appendix or printed extract will be filed within a time to be prescribed by this Court. In any such event, the case shall be reinstated on the Docket on such terms, including terms as to costs, as may be prescribed by this Court.

APPENDIX B

(ORDERS BELOW)

In The Court of Appeals of Maryland

No. 75

September Term, 1968

Arnold Constable Corporation,
Appellant,

v.

Eudowood Shopping Plaza, Inc.,
Appellee.

MOTION TO DISMISS APPEAL

(Filed May 16, 1968)

Eudowood Shopping Plaza, Inc., Appellee, by William J. Pittler and Sullivan & Pittler, its attorneys, moves, pursuant to Rule 835 b (4) of the Maryland Rules of Procedure, that the Appeal entered in the above captioned case be dismissed, and for reasons therefor, states:

* * * * * * *

Granted May 27, 1968.

/s/ HALL HAMMOND,
Chief Judge.

ORDER

Upon consideration of the motion to reconsider order of dismissal or, in the alternative, to rescind order of dismissal and answer filed thereto, it is this 27th day of June, 1968,

ORDERED by the Court of Appeals of Maryland that the motion to reconsider order of dismissal, or in the alternative, to rescind order of dismissal be, and it is hereby, denied.

/s/ HALL HAMMOND,
Chief Judge.

APPENDIX C

(AFFIDAVITS)

AFFIDAVIT OF FRANK L. ENSOR

1. I am employed by the Superior Court of Baltimore City as Assistant Chief Clerk, and my duties include assembling and transmitting to the Court of Appeals the records of cases which have been appealed to the Court of Appeals.

2. As part of my duties, I assembled the court file and trial exhibits in the case of Arnold Constable Corporation v. Eudowood Shopping Plaza, Inc., Court of Appeals No. 75, September Term, 1968.

3. The transcript of testimony was not originally a part of the records of the Superior Court of Baltimore City and was to be supplied to me by counsel for appellant.

4. On April 2, 1968 an Order of Court extending the time for transmitting the record to the Court of Appeals to May 10, 1968 was filed.

5. In reliance upon said Order and not realizing that said Order purported to extend the time of transmittal three days beyond the maximum period of time set by the Maryland Rules of Procedure, I requested Cleaveland D. Miller, one of the attorneys for Appellant, to deliver the transcript of testimony to me by May 6, 1968.

6. Cleaveland D. Miller did deliver the transcript of testimony to me during the morning of May 6, 1968 and delivered to me a statement of the cost of the transcript during the morning of May 7, 1968.

7. I believed that the deadline for filing the record in this case was May 10, 1968 and did not realize that such deadline was in fact May 7, 1968. Therefore, although the record was complete and ready for transmittal on May 7, 1968, I made no effort to deliver the record on that date, either by delivering it by hand to the Clerk of the Court of Appeals or by depositing it in the United States mail, as registered or certified mail, postage prepaid, return receipt requested, directed to the Clerk of the Court of Appeals.

8. Again, believing that the deadline for filing the record was May 10, 1968, I waited until May 8, 1968 to file the record because I had prepared a record in another case for filing with the Court of Appeals, which was due May 8, 1968; and I sent both the record in this case and the record in the other case to the Clerk of the Court of Appeals by the same messenger.

9. There was nothing further required to be done by Appellant's attorneys to make the record ready for transmittal to the Clerk of the Court of Appeals by May 7, 1968, and they had done everything required of them in time for the record to be so transmitted on May 7, 1968.

10. The record in this case was not transmitted in a timely fashion to the Clerk of the Court of Appeals because of my belief that the deadline for filing the record was May 10, 1968 and not May 7, 1968.

/s/ FRANK L. ENSOR,
Assistant Chief Clerk,
Superior Court of Baltimore City.

State of Maryland, City of Baltimore, to wit:

I Hereby Certify that on this 15th day of May, 1968, before me a Notary Public in and for the State and City aforesaid, personally appeared Frank L. Ensor, and made oath in due form of law that the matters and facts heretofore stated are true and correct.

As witness my hand and Notarial Seal.

NORMAN ROTHBLOOM,
Notary Public.

(Notary Seal)

AFFIDAVIT OF CLEAVELAND D. MILLER

1. I am one of the attorneys of record for Arnold Constable Corporation, the Appellant herein, and have assisted

in the representation of the Appellant in the trial of this case before the Superior Court of Baltimore City.

2. After the judgment of the lower court against Appellant and in favor of Appellee became absolute on January 24, 1968, I filed with the lower court an Order of Appeal to the Court of Appeals on February 7, 1968. On that same date I also filed an Appeal Bond on behalf of Appellant in the amount of $350,000.00.

3. The lower court, by its order dated January 9, 1967, had referred this case to H. Paul Rome, Examiner-Master, and the testimony of the witnesses herein was presented to the Examiner-Master. The transcript of testimony was taken, on the first day of the hearing, by the office staff of the Examiner-Master and was thereafter taken by Gore Brothers Reporting Company.

4. The records of the lower court, at the times judgment absolute was rendered and an appeal taken, did not contain any transcript of the testimony but did contain a complete set of all exhibits.

5. I presented a Motion to Extend Time for transmitting the record to the Court of Appeals to Judge Joseph L. Carter, who had referred the hearing of the evidence to the Examiner-Master, who had heard all arguments on the Examiner-Master's report and who had filed a Memorandum Opinion, and Judge Carter signed an Order extending the time until April 5, 1968. This Order was filed on February 26, 1968.

6. I presented a similar motion to Judge Carter on April 2, 1968, and Judge Carter signed an Order further extending the time until May 10, 1968.

7. Thereafter, Frank L. Ensor, the Assistant Chief Clerk of the Superior Court of Baltimore City and the clerk who was handling the preparation of the record herein for transmittal to the Court of Appeals, requested me to supply him with a complete copy of the transcript of testimony by May 6, 1968. I had such a copy delivered by hand to him during the morning of May 6, 1968.

8. Mr. Ensor had also requested that I give him a statement of the cost of the transcript, and this I had delivered by hand to him early in the morning of May 7, 1968.

9. All costs required to be paid by Appellant were paid on March 6, 1968.

/s/ CLEAVELAND D. MILLER

State of Maryland, City of Baltimore, to wit:

I Hereby certify that on this 15th day of May, 1968, before me, a Notary Public in and for the State and City aforesaid, personally appeared Cleaveland D. Miller, who made oath in due form of law that the matters and facts heretofore stated are true and correct.

As Witness my hand and Notarial Seal.

/s/ TERESA MANGOGNA,
Notary Public.

(Notary Seal)